(1981) 11 AHC CK 0045

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 450 of 1980

Kumar Brothers and others APPELLANT

Vs

Municipal Board, Kalpi RESPONDENT

Date of Decision : 20-11-1981

Acts Referred:

Uttar Pradesh Municipalities Rules, 1916 — Rule 131 Proviso

Citation : (1981) 11 AHC CK 0045

Hon'ble Judges : C.S.P.Singh, J and R.R.Rastogi, J

Final Decision : Allowed

Judgement

C. S. P. Singh, J.

The Municipal Board, Kalpi, vide notification No. 830/23138 (6162) published in the U. P. Gazette of the 19th January, 1963, imposed octroi duty on as many as 165 items. This octroi duty came into effect from 1st of February, 1963. In the 12th category of items which were subjected to octroi duty, diesel oil and Kerosene oil were included, and the rate of duty was 30 paise. In the latter part of this very notification a list of items which were exempted from octroi duty was given. At item 30, kerosene oil and diesel oil found a place. As a result, these items were exempted from payment of octroi duty. The Municipal Board, Kalpi, amended this notification by another notification which was published in the U. P. Gazette of 3rd of May, 1980, being notification no. 185253/021LBA204/7879. The octori rate for as many as 122 items was revised. In the third category of the items on which octroi duty was revised diesel oil was included at item No. 8 and kerosene oil at item No. 9. The petitioner was dealing in diesel and kerosene oil on retail basis, and the Municipal Board, Kalpi, demanded octroi duty on these two items. The present petition has been filed challenging this demand.

Counsel for the petitioner contended that the Municipal Board had no jurisdiction to demand octroi duty on diesel oil and kerosene oil. he relied upon a Division Bench decision of this Court in the case of Municipal Board, Bareilly v. Bharai Oil Co. 1975 A.L.J. 84, in which it was held that by virtue of the exception contained in proviso 131 of the Rules the Municipal Board had no power to impose octroi duties on mineral oil. This decision, however is no longer good law as it has been overruled by a Full Bench in the case of M/s. Central Distillery, & Chemical Work Ltd. v. State of U. P. 1979 U.P.T.C. 1206. We prefer to follow the decision of the superior Bench.

Counsel for the petitioner contended that inasmuch as the notification of the 8th of January, 1963, was only amended by the Notification of the 3rd of May, 1980, and as the exemption granted by the earlier notification was not done away with by the notification of 3rd of May, 1980, the Municipal Board could not realise octroi duty till it rescinded the exemption. We have seen both the notifications. It is quite clear that the notification of 3rd of May 1980, only amended the rate of tax, in respect of certain items. It did not rescind the exemption granted by the earlier notification in respect of the articles mentioned in that part of the notification. Counsel for the Municipal Board contended that inasmuch as the notification of the 3rd May 1980 had been promulgated after satisfying the statutory requirements, and as it sought to revise the rates of octroi duty on diesel and kerosene, the effect of the revision was to do away with the exemption granted by the earlier notification We are not impressed by this argument. The notification of 3rd May 1980 only effected a revision of rates, and that too only in respect of some of the articles mentioned in the notification of the 8th January 1963 It did repeal the notification of the 8th January, 1963. The notification of 11th January, 1963 remained intact as respects items which were not amended by the subsequent notifications. The provision for exemption contained in the notification of the 8th January, 1963, were also not touched by the notification of 3rd of May, 1980. Thus, the subsequent notification not having repealed the earlier one, the exemption granted by the earlier notification in respect the kerosene and diesel continued.

The petition succeeds and the opposite party is directed not to realise octroi duty on kerosene and diesel from the petitioners on the strength of the notification of the 3rd of May, 1980. The petitioners are entitled to the costs. The amount deposited by the petitioner with the Municipal Board under orders of this Court shall be refunded to them within a period of month of this order being filed before the Municipal Board.

